

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff

v.

ALLIED OIL & SUPPLY CO.,
BAKER PETROLITE CORPORATION,
CITGO PETROLEUM CORPORATION,
CHEVRON ENVIRONMENTAL
MANAGEMENT COMPANY,
CONOCOPHILLIPS COMPANY,
COOK COMPOSITES AND POLYMERS CO.,
CURRAN PAINT AND VARNISH COMPANY,
ELEMENTIS CHEMICALS INC.,
HARCROS CHEMICALS INC.,
EXXON MOBIL CORPORATION,
HEATHWOOD OIL COMPANY, INC.,
MALLINCKRODT INC.,
PAM OIL INC.,
3M COMPANY.,

Defendants.

Civil Action No. _____

COMPLAINT

The United States of America, by authority of the Attorney General of the United States
and at the request of the United States Environmental Protection Agency ("EPA"), alleges as
follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, as amended by the Superfund Amendments and Reauthorization Act of 1986. The United States brings this action to recover response costs it has incurred in responding to releases and threatened releases of hazardous substances into the environment at and from the Container Recycling Superfund Site in Kansas City, Kansas.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c) because the claims arose and the threatened and actual releases of hazardous substances occurred in this district.

DEFENDANTS

4. Allied Oil & Supply Co. is a corporation incorporated under the laws of the State of Nebraska, with its principal place of business at 2209 S. 24th Street, Omaha, Nebraska 68103.

5. Baker Petrolite Corporation is a corporation incorporated under the laws of the State of Delaware, with its principal place of business at 12645 West Airport Boulevard, Sugar Land, Texas 77478.

6. Citgo Petroleum Corporation is a corporation incorporated under the laws of the State of Delaware, with its principal place of business at 1293 Eldridge Parkway, Houston, TX 77077.

7. Chevron Environmental Management Company is a corporation incorporated under the laws of the State of Delaware, with its principal place of business at 6001 Bollinger Canyon Road, San Ramon, CA 94583.

8. Conocophillips Company is a corporation incorporated under the laws of the State of Delaware, with its principal place of business at 600 N. Dairy Ashford, Houston, Texas 77079.

9. Cook Composites and Polymers Co. is a corporation incorporated under the laws of the State of Missouri, with its principal place of business at 820 E. 14th Avenue, North Kansas City, Missouri 64116.

10. Curran Paint and Varnish Company, formerly known as Cook Paint and Varnish Company, is a corporation incorporated under the laws of the State of Delaware, with its principal place of business at 919 E. 14th Avenue, North Kansas City, Missouri 64116-3703.

11. Elementis Chemicals Inc., formerly known as Harcros Chemicals Inc., is a corporation incorporated under the laws of the State of Delaware, with its principal place of business at 329 Wyckoffs Mill Road, P.O. Box 700, Highstown, New Jersey 08520.

12. Exxon Mobil Corporation is a corporation incorporated under the laws of the State of New Jersey, with its principal place of business at 5959 Las Colinas Boulevard, Irving, Texas 75039.

13. Harcros Chemicals Inc. is a corporation incorporated under the laws of the State of Kansas, with its principal place of business at 5200 Speaker Road, Kansas City, Kansas 66106.

14. Heathwood Oil Company, Inc. is a corporation incorporated under the laws of the State of Kansas, with its principal place of business at 2011 N 10th Street, Kansas City, Kansas 66104.

15. Mallinckrodt, Inc. ("Mallinckrodt") is a corporation incorporated under the laws of the State of New York, with its principal place of business at 675 McDonnell Boulevard, St. Louis, Missouri 63134.

16. Pam Oil Inc. is a corporation incorporated under the laws of the State of South Dakota, with its principal place of business at 200 Petro Avenue South, Sioux Falls, South Dakota 57107.

17. 3M Company is a corporation incorporated under the laws of the State of Delaware, with its principal place of business at 3M Corporate Headquarters, 3M Center, St. Paul, Minnesota 55144.

GENERAL ALLEGATIONS

A. Site Ownership and Operation

18. The Container Recycling Superfund Site (the "Site") is a twenty-acre site located at 1161 South 12th Street, Kansas City, Kansas. The Site encompasses land and improvements that formerly were the location of a drum reclamation business.

19. From approximately 1965 to approximately 1996 the Site was the location of a facility that reconditioned used steel drums.

20. From approximately 1965 to 1971, the facility was owned and/or operated by Sims Barrel Company, Incorporated.

21. Between 1971 to 1976, International Minerals & Chemicals Company ("IMC") and its Great Lakes Container Division owned and/or operated the facility.

22. In 1976, IMC sold its Great Lakes Container Division, including this Kansas City business location, to the Great Lakes Container Corporation (GLCC), which operated this drum reclamation facility until 1986.

23. In 1986, GLCC sold the facility to Container Recycling, Inc. (CRI), which in turn owned and/or operated the facility between 1986 and 1996.

B. Site Operations

24. The facility at the Container Recycling Superfund Site acquired, reconditioned, and disposed of used steel barrels and drums.

25. The facility processed both closed-head drums, which had been used to hold primarily oil or petroleum-derivative products, and open-head drums, which had been used to contain a wide variety of products, such as glue, paint, ink, rubber cement, and baking enamel.

26. The processes generated wastes that included residues of the contents of the drums and paint booth sludge.

27. Over 3.5 million drums were reconditioned, sold, and/or scrapped at the facility from 1986 through 1996.

28. Allied Oil & Supply Company, Baker Petrolite Corporation, Citgo Petroleum Corporation, Chevron Environmental Management Company, Conocophillips Company, Cook Composites and Polymers Company, Curran Paint and Varnish Company, Elementis Chemicals Incorporated, Exxon Mobil Corporation, Harcros Chemicals Incorporated, Heathwood Oil

Company, Incorporated, Pam Oil Incorporated, and 3M Company ("Arranger Defendants"), or their respective successors, shipped drums to the Site.

29. The drum reconditioning facility at the Site reconditioned drums owned by each of the Arranger Defendants, or their respective successors.

30. Some or all of the drums shipped by Allied Oil & Supply Company and reconditioned at the Site contained residues of hazardous substances.

31. Some or all of the drums shipped by Baker Petrolite Corporation and reconditioned at the Site contained residues of hazardous substances.

32. Some or all of the drums shipped by Citgo Petroleum Corporation and reconditioned at the Site contained residues of hazardous substances.

33. Some or all of the drums shipped by Chevron Environmental Management Company and reconditioned at the Site contained residues of hazardous substances.

34. Some or all of the drums shipped by Conocophillips Company and reconditioned at the Site contained residues of hazardous substances.

35. Some or all of the drums shipped by Cook Composites and Polymers Company and reconditioned at the Site contained residues of hazardous substances.

36. Some or all of the drums shipped by Curran Paint and Varnish Company and reconditioned at the Site contained residues of hazardous substances.

37. Some or all of the drums shipped by Elementis Chemicals Incorporated and reconditioned at the Site contained residues of hazardous substances.

38. Some or all of the drums shipped by Exxon Mobil Corporation and reconditioned at the Site contained residues of hazardous substances.

39. Some or all of the drums shipped by Harcros Chemicals Incorporated and reconditioned at the Site contained residues of hazardous substances.

40. Some or all of the drums shipped by Heathwood Oil Company, Incorporated, and reconditioned at the Site contained residues of hazardous substances.

41. Some or all of the drums shipped by Pam Oil Incorporated, and reconditioned at the Site contained residues of hazardous substances.

42. Some or all of the drums shipped by 3M Company and reconditioned at the Site contained residues of hazardous substances.

43. The hazardous substances removed from the Arranger Defendants' drums, including liquids in the drums and paint residue on the outside of the drums, were not returned to the Arranger Defendants.

44. Mallinckrodt and its successors owned the facility and the land on which the facility operated from 1976 to 1986.

45. Mallinckrodt and its successors operated the drum reclamation facility between 1976 and 1986.

46. Throughout the period of operations, including 1976 to 1996, the Site became contaminated with lead, arsenic, mercury, polycyclic aromatic hydrocarbons, asbestos, and tetrachloroethylene.

C. EPA Response Actions at the Site

47. In January 1997, EPA performed a Phase I assessment of the Site.

48. In June 1997, EPA performed a Phase II assessment of the Site.

49. In November 1998, EPA completed a Removal Assessment of the Site.

50. Between 1998 and November 29, 2001, EPA and its contractors excavated approximately 4,000 buried drums, which they transported to appropriate off-site landfills with 3,200 above-ground drums, 64 cubic yards of asbestos-contaminated material, and 700 tons of lagoon sludge. EPA also installed a protective barrier over the contaminated soil and treated 8,650 gallons of contaminated water.

51. As of September 30, 2004, EPA had expended approximately \$3,379,609 in response costs in connection with the Site.

CERCLA LIABILITY

52. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part that:

- (1) the owner and operator of . . . a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, [and]
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for —

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan

53. The Site is a "facility," as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

54. Various parts of the reconditioning equipment at the at the Site, including but not limited to the incinerator, the shot-blaster, and the hydraulic expander, were all "facilities" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

55. There were "releases" and "threatened releases," as those terms are defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of "hazardous substances," as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), at or from the Site.

56. The releases and threatened releases of hazardous substances at the Site caused the United States to incur "response" costs, as that term is defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

57. Allied Oil & Supply Company, Baker Petrolite Corporation, Citgo Petroleum Corporation, Chevron Environmental Management Company, Conocophillips Company, Cook Composites and Polymers Company, Curran Paint and Varnish Company, Elementis Chemicals Incorporated, Exxon Mobil Corporation, Harcros Chemicals Incorporated, Heathwood Oil Company, Incorporated, Mallinckrodt, Pam Oil Incorporated, and 3M Company are "persons," as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

58. IMC was the owner and/or operator of the Site, including the physical plant and equipment, from about 1976 to about 1986.

59. There was "disposal," as that term is defined in Section 101(29) of CERCLA, 42 U.S.C. § 9601(29), and Section 1004 of the Solid Waste Disposal Act, 42 U.S.C. § 6903, of hazardous substances at the Site, including the physical plant and equipment, while IMC was the owner and/or operator.

60. There was disposal of hazardous substances at the Site, including the physical plant and equipment, while IMC was the owner and/or operator.

61. Mallinckrodt is a successor-in-interest of IMC.

62. Allied Oil & Supply Company, Baker Petrolite Corporation, Citgo Petroleum Corporation, Chevron Environmental Management Company, Conocophillips Company, Cook Composites and Polymers Company, Curran Paint and Varnish Company, Elementis Chemicals Incorporated, Exxon Mobil Corporation, Harcros Chemicals Incorporated, Heathwood Oil Company, Incorporated, Pam Oil Incorporated, and 3M Company by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances they owned or possessed, which hazardous substances were disposed of at the Site.

63. At the time of the response actions, the Site contained the same kinds of hazardous substances that Allied Oil & Supply Company, Baker Petrolite Corporation, Citgo Petroleum Corporation, Chevron Environmental Management Company, Conocophillips Company, Cook Composites and Polymers Company, Curran Paint and Varnish Company, Elementis Chemicals Incorporated, Exxon Mobil Corporation, Harcros Chemicals Incorporated, Heathwood Oil Company, Incorporated, Pam Oil Incorporated, and 3M Company had arranged to have treated or disposed of.

CLAIM FOR RELIEF

64. Paragraphs 1 through 63 are realleged and incorporated herein by reference.

65. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), each defendant is jointly and severally liable to the United States for all costs incurred and to be incurred by the United States in connection with the Site not inconsistent with the national contingency plan.

66. CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), provides in pertinent part that in any cost recovery action brought under CERCLA Section 107, 42 U.S.C. § 9607, “the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.”

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America, respectfully requests that the Court:

1. Enter judgment in favor of the United States and against all defendants jointly and severally, for all response costs incurred by the United States in connection with the Site, including interest;
2. Enter declaratory judgment in favor of the United States and against all defendants jointly and severally, for all further costs the United States may incur in connection with the Site;
3. Award the United States its costs in this action; and
4. Grant such other relief as is appropriate.

Respectfully submitted,

FOR THE UNITED STATES:

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